IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Criminal Appeal No. 522 -DB of 1997

Date of Decision :- January 9, 2007.

Ram Kumar and another ....APPELLANTS

VERSUS

State of Haryana ....RESPONDENT

CORAM: HON'BLE MR. JUSTICE MEHTAB S.GILL
HON'BLE MR. JUSTICE ARVIND KUMAR

Present:- Mr. R.N.Kush, Advocate
for the appellants.

Mr. Kulvir Narwal, Addl. Advocate General, Haryana.

MEHTAB S.GILL, J.

This is an appeal against the judgment of Sessions Judge, Hisar whereby he convicted Ram Kumar son of Daya Ram and Smt. Jahro wd/o Mehar Singh under Section 302 IPC read with Section 34 IPC and sentenced them to undergo life imprisonment and to pay a fine of Rs.5,000/- each. In default of payment of fine, to further undergo rigorous imprisonment for one year.

The case of the prosecution is unfolded by the statement Ex.PE of Bani Singh given to ASI Parkash Chander at Bus Stand Village

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Bass. Bani Singh stated that some years back his collateral viz. grandfather Mehar Singh migrated from Village Nidhana to Village Puthi. Mehar Singh had two sons namely Lehna Singh and Raj Kumar and three daughters. One daughter was married. Mehar Singh died about 1-½ years back. Lehna Singh had two sons and one daughter. On 28.3.1996 at about 2/2.30 p.m., Jahro w/o Mehar Singh came to Bani Singh and told him that her son Lehna Singh was lying dead on a cot spread in the Choubara. Ran Singh son of Birakha Ram resident of Village Puthi and Bani Singh came to the house of Mehar Singh and found that Lehna Singh was lying dead on a cot. He had received three injuries on his neck with a sharp edged weapon. Bani Singh and Ran Singh then made enquiries from the villagers and it came to their knowledge that on the previous night a quarrel had taken place between Lehna Singh on one side and his mother Jahro and maternal uncle Ram Kumar on the other side. Leaving Fattan Chowkidar at the spot, Ram Singh and Bani Singh went to the police post and lodged a report. On the basis of this statement, FIR Ex.PE/2 was recorded on 28.3.1996 at 11.30 p.m. The special report reached the Ilaqa Magistrate on 29.3.1996 at 1.30 a.m.

The prosecution to prove its case brought into the witness box Dr. L.L.Bundela as PW1, Shamsher Singh Draftsman as PW2, ASI Roshan Lal as PW3, Bani Singh as PW4, Narender Kumar Photographer as PW5, Rattan Kaur as PW6, Suraj Kaur as PW7, Ranbir Singh as PW8, Nihal Singh as PW9 and ASI Parkash Chand as PW10.

Learned counsel for the appellants has argued, that apart from the blood stained clothes, which were recovered from the appellants, there

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is no piece of evidence which goes in favour of the prosecution. Occurrence had taken place on the intervening night of 27/28.3.2006 and the appellants were arrested on 3.4.1996. It is not imaginable that the appellants would have been wearing the blood stained clothes for six days continuously. They would have destroyed these clothes. Bani Singh PW4 has only given the information to the police that Lehna Singh has been murdered. Apart from this information, nothing else has been disclosed. Bani Singh PW4 was declared hostile by the prosecution. Similarly, the other witness Suraj Kaur PW7, who was produced by the prosecution to prove the conspiracy theory, was also declared hostile and did not support the prosecution case. Ranbir Singh Sarpanch, PW8 also did not support the prosecution case. The only witness that the prosecution is left with is Rattan Kaur PW6, whose testimony cannot be believed. The chain of circumstances leading to the murder of Lehna Singh deceased was to be built up by the prosecution, but in this case there is no circumstance, which can hold the appellants guilty.

Learned counsel for the State has argued, that the FSL report Ex.PJ shows that the shirt, baniyan, pyjama and kurta were blood stained and the Serologist found the blood stains to be of human blood. Murder of Lehna Singh had taken place in the house of appellant Jahro. The onus was on appellant Jahro to state as to how the body was lying in her house. Bani Singh PW4, the complainant though declared hostile, has admitted in his statement that he made statement Ex.PE, on the basis of which FIR Ex.PE/2 was recorded. Statement of Rattan Kaur PW6, the wife of the

deceased, is truthful. She is no other person than the daughter-in-law of appellant Jahro.

We have heard the learned counsel for the parties and perused the record with their assistance.

After going through the statements of Bani Singh PW4, Saraj Kaur PW7 and Ranbir Singh Sarpanch PW8, nothing can be extracted, which can go in favour of the prosecution. Bani Singh PW4 has stated in his testimony before the Court, that he did not know how Lehna Singh had died. Lehna Singh had no enmity in the village. Though he (PW4) has stated, that he made the statement Ex.PE in the Police Post Bass, but in his cross-examination, he has categorically stated, that he did not say in his statement Ex.PE, that Jahro had told him that Lehna Singh was lying dead in the choubara. He further denied that he did not have knowledge of the quarrel taking place between the deceased and the appellants on the previous night. He has further stated that deceased Lehna Singh's wife Rattan Kaur PW6 was not present in the village on the night of the occurrence and had gone to her parents' house. Suraj Kaur PW7 has also stated, that there was no dispute between deceased Lehna Singh and appellant Jahro. She did not know about the murder nor did she hear anything of the appellants' conspiring to murder Lehna Singh. Similarly, Ranbir Singh PW8 has also stated, that appellants did not make any extra judicial confession before him regarding the murder of Lehna Singh.

We are left with the statement of only Rattan Kaur PW6. Rattan Kaur PW6 has stated, that whenever she or her husband needed money, they used to demand it from her mother-in-law, Jahro. Sometimes

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her mother-in-law gave them money and sometimes she refused. In her statement, she (PW6) has stated, that her husband had gone to village Julana in the morning and had returned at 10/10.30 p.m. At 7.00 p.m. she was milching her buffalo and she heard the appellants talking to each other that they would kill Lehna Singh her husband on that night. Thereafter, she went to Village Julana to inform her husband, but she could not meet him. When she returned to Village Pudhi on 28.3.1996, she came to know that her husband had been murdered. In her cross-examination, she has stated that when she heard the accused conspiring to kill her husband, she did not inform anyone in Village Pudhi about the conspiracy being hatched by appellants Jahro and Ram Kumar. The statement of this witness cannot be relied upon. It is strange that though she had heard the appellants conspiring to kill her husband, but she did not think it imperative and right to inform the Sarpanch, respectables or her neighbours about the conspiracy. She has stated in her statement, that the appellants were conspiring in the kotha situated in the rare portion of their house on the left hand. The site plan clearly shows that the room, where the alleged conspiracy had taken place, was away from where Rattan Kaur PW6 was milching her buffalo. This witness is untrustworthy. She was not present on the day the occurrence had taken place. The chain of circumstances, which were to be proved by the prosecution, have not been done so. In fact there is no link in the circumstances which the prosecution has tried to built up.

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A doubt is created in our mind as to whether the appellants had committed the murder of Lehna Singh, the benefit of which is given to the appellants.

Appeal is allowed. Conviction and sentence of the appellants is set aside. Appellants are acquitted of all the charges.

(MEHTAB S.GILL)
JUDGE

(ARVIND KUMAR)
JUDGE

January 9, 2007
SKA

WHETHER TO BE REFERRED TO REPORTER? YES/NO